

PR#9833

PARRISH, DANIEL

1/14/2008

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel.
4 W.A. DREW EDMONDSON, in his capacity as
5 ATTORNEY GENERAL OF THE STATE OF
6 OKLAHOMA, and OKLAHOMA SECRETARY
7 OF THE ENVIRONMENT C. MILES TOLBERT,
8 in his capacity as the TRUSTEE FOR NATURAL
9 RESOURCES FOR THE STATE OF OKLAHOMA,

10 Plaintiffs,

11 vs. No. 05-CV-0329 GFK-SAJ

12 TYSON FOODS, INC., TYSON POULTRY, INC.,
13 TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
14 AVIAGEN, INC., CAL-MAINE FOODS, INC.,
15 CAL-MAINE FARMS, INC., CARGILL, INC.,
16 CARGILL TURKEY PRODUCTION, LLC,
17 GEORGE'S, INC., GEORGE'S FARMS, INC.,
18 PETERSON FARMS, INC., SIMMONS FOODS, INC.,
19 and WILLOW BROOK FOODS, INC.,

20 Defendants.

21 VIDEO DEPOSITION OF DANIEL JOSEPH PARRISH
22 TAKEN ON BEHALF OF THE DEFENDANTS
23 ON JANUARY 14, 2008, BEGINNING AT 9:37 A.M.
24 IN OKLAHOMA CITY, OKLAHOMA

25 Videographer: Stephanie Britton
Reported by: Lana L. Phillips, CSR, RPR

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1 **A** Yes.

2 **Q** Two, it's intended to minimize
3 agricultural nonpoint source pollution; true?

4 **A** Based upon this document, under
5 Purpose, that is checked, yes.

6 **Q** All right. The plan writer's
7 indicated that it is also intended to utilize
8 organic material as a nutrient source.

9 Agree?

10 **A** Based upon this document, yes.

11 **Q** And the last purpose, to maintain or
12 improve soil condition.

13 **A** Yes. Again, based on this document.

14 **Q** All right. Would you agree,
15 Mr. Parrish, that utilizing organic material as a
16 nutrient source and maintaining or improving soil
17 condition are the primary motivations for one to
18 make use of poultry litter on your land?

19 **A** It would certainly be some of the
20 motivations.

21 **Q** Okay. And again, as you work down
22 through the document, it indicates the phosphorus
23 content of the poultry manure that was sampled;
24 correct?

25 **A** It does, but let's -- I need to add

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1 Q All right. So ODAFF's position is
2 that testing for these substances is within its
3 power and jurisdiction?

4 A The law states that we can test
5 and/or request any information we desire, to
6 enforce the law and compliance.

7 Q So is the answer to my question yes?

8 A The Poultry Feeding Act law and
9 rules and applicators rules allow us to sample
10 and request anything from operations, based upon
11 what we want to do in order to enforce
12 compliance.

13 Q If I could make a request,
14 Mr. Parrish. If I ask a question that is capable
15 of being answered with a yes or no, I believe
16 that you are obliged to answer with a yes or no,
17 and then if you need to supplement that, clarify,
18 qualify, I'm fine with you doing that. I'm not
19 trying to keep you from testifying.

20 But if I ask a question, if it could
21 be answered yes or no, I would appreciate it. If
22 you would give me that yes or no, and then if you
23 need to state further --

24 A I'll attempt to do that every time
25 that I can.

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1 swine operations -- I can tell you what it is
2 specifically, if you want to know the numbers --
3 which are also CAFOs -- are definitely required
4 to test for bacteria.

5 CAFOs that are not LMFOs are
6 required to test for bacteria when -- assuming
7 they have lagoons, which most of them do, then
8 they are required to test for that from their
9 lagoons, not as often as LMFOs.

10 Q Are there any LMFOs in the Illinois
11 River watershed?

12 A Yes.

13 Q Those well sampling data comes back
14 to your division? Is that correct?

15 A That is correct.

16 Q Are you aware of any currently
17 pending complaints of water well contamination in
18 the Illinois River watershed from animal manure?

19 A Please clarify for me. When you say
20 "animal manure," are you including animal and
21 poultry manure or only animal manure?

22 Q Well, I included poultry as an
23 animal.

24 A Okay. I'm not aware of. But we get
25 in complaints every day, so -- then do I break

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1 them down by watersheds? No. I'm not aware of,
2 but I do not know that for a fact.

3 Q Are you aware of any current citizen
4 complaints of bacterial contamination of water
5 from poultry litter in the Illinois River
6 watershed?

7 A I'm not aware of any on recent days
8 or weeks. I cannot go back to 1997 when our
9 division was formed.

10 Q I understand. My question was
11 current.

12 So your answer is you're not aware
13 of any?

14 A On a current basis in the last
15 couple of weeks, I am not aware of any.

16 Q The statutory provisions, which is
17 Exhibit 1 to your deposition, Section 10-9.10, I
18 think it's labeled Investigation of Complaints,
19 your AEMS -- your division of ODAFF has both the
20 mechanism and the ability to receive citizen
21 complaints and to investigate those complaints
22 related to animal operations; correct?

23 A We have the mechanism, and required
24 by the law to do so.

25 Q All right. And the jurisdictional

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1 statement, yes.

2 Q All right. So during this last
3 legislative session, the Oklahoma legislature
4 adopted a new phosphorus standard to be utilized
5 for all the land application of poultry waste in
6 the Oklahoma portion of the Eucha-Spavinaw
7 watershed, by virtue of this statute.

8 Agree?

9 A Yes.

10 Q And once the legislature passed the
11 Act directing ODAFF to promulgate regulations,
12 then ODAFF did just that, in Title 35 of the --
13 of the Oklahoma regulations; right? For ODAFF?

14 A Correct. 35:17-11, as part of the
15 document, Exhibit 10, you gave to me, yes.

16 Q Now, you would agree that neither
17 this Eucha-Spavinaw Management Act, nor ODAFF's
18 new regulations under the Act, completely
19 eliminated the use of poultry waste on
20 agricultural lands in the Eucha-Spavinaw
21 watershed?

22 A Please ask that question again.

23 Q Let me rephrase it if I was confused
24 -- if I created confusion.

25 This Eucha-Spavinaw Management Act

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1 and the regulations pursuant to the Act changed
2 the poultry waste management protocols, but it
3 did not ban the use of poultry waste in the
4 Eucha-Spavinaw watershed?

5 A That statement is correct, yes.

6 Q Is there any process within ODAFF
7 underway to revise the poultry waste application
8 standards within the Illinois River watershed?

9 A By the Oklahoma Department of
10 Agriculture, Food, and Forestry? Was that your
11 question?

12 Q Yes.

13 A Not that I am aware of. That would
14 not come from me, but not that I'm aware of.

15 Q Today -- it is permissible today --
16 and it is, what, January 14th, 2008 -- it's
17 permissible to land-apply poultry waste in the
18 Illinois River watershed, provided it's done in
19 compliance with the statutes and regulations;
20 correct?

21 MR. GARREN: Did you mean to say
22 "Illinois"?

23 MR. McDANIEL: Let me reask it if I
24 misspoke. Sounds like I must have.

25 Q (BY MR. McDANIEL) Today it's

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1 permissible to land-apply poultry waste within
2 the Illinois River watershed, provided it's done
3 in conformance -- done in compliance with the
4 statutes and regulations in effect; correct?

5 A Yes.

6 Q Does ODAFF have a role in setting
7 Oklahoma's water quality standards?

8 A Yes.

9 Q Explain what that role is.

10 A Every year, the Secretary of
11 Environment requests us -- by law, requests the
12 Department of Agriculture, along with other
13 environmental agencies, to submit to them an
14 update of the water quality standards -- in our
15 case, that affects agricultural activities -- and
16 then we have staff that does that -- helps in
17 that revision every year.

18 Q Among those water quality standards,
19 is bacteria one of the contaminants of concern
20 that you address?

21 A Bacteria is addressed I believe in
22 the dialogue that is in there. The dialogue
23 that's in there, I believe bacteria is referred
24 to by our staff that does that.

25 I don't do that. I've got staff

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1 Q But no such determination has been
2 made by ODAFF; correct?

3 A That is correct.

4 Q Has ODAFF made a finding or
5 determination that the land application of
6 poultry waste in the Illinois River watershed is
7 presenting an imminent and substantial risk of
8 harm to human health?

9 A No. The Department of Agriculture
10 has not, but -- do not have staff, budget, or
11 time to be able to even think about doing that.

12 Q Has ODAFF made any finding or
13 determination that the practice of land
14 application of poultry waste in the Illinois
15 River watershed should be stopped?

16 A One more time, please.

17 Q Has ODAFF made a finding or
18 determination that the practice of land-applying
19 poultry waste in the Illinois River watershed
20 should be stopped?

21 A A determination has not been made,
22 but I believe there have been instances where
23 there have been individuals who have been made to
24 stop, because of soil samples we've collected or
25 they've submitted to us.

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1 Q But there -- but ODAFF has not made
2 a finding or recommendation that the practice in
3 total should be prohibited in the Illinois River
4 watershed?

5 A No. Based upon that question you
6 just asked.

7 Q To your knowledge, was anyone at
8 ODAFF consulted about this lawsuit before it was
9 filed?

10 MR. GARREN: Objection.

11 THE WITNESS: I can only speak of
12 myself -- that I was told after it was filed.
13 Whether anyone else in the agency -- I'm a peon.
14 There's lots of people way above me. I do not
15 know whether there were other people that were
16 consulted.

17 Q (BY MR. McDANIEL) The question was:
18 To your knowledge, was anyone at ODAFF consulted
19 about this lawsuit before it was filed?

20 If I understand your answer, it is,
21 to your knowledge, no.

22 Is that an accurate answer?

23 A No. To my knowledge, I am not aware
24 of it.

25 Q To your knowledge, was anyone at

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1 provided any of the data underlying the experts'
2 affidavits submitted in support of the motion for
3 preliminary injunction?

4 MR. GARREN: Same objection.

5 THE WITNESS: No, I have not.

6 MR. GARREN: Same objection.

7 MR. McDANIEL: I'm sorry, Rick. I
8 didn't hear what you said.

9 MR. GARREN: Same objection.

10 MR. McDANIEL: Oh, "same objection."

11 MR. GARREN: Yeah.

12 Q (BY MR. McDANIEL) Let me hand you
13 what I've marked as Exhibit 11. I believe that
14 is a shot from one of the ODAFF's web pages.

15 Tell me if you agree with that.

16 A This -- yes, I am ready.

17 Q All right. Do you agree this is a
18 web page -- or a page from ODAFF's website?

19 A Yes, it is.

20 There's more of an answer to that.
21 Originally started by our division, and now in
22 conjunction with Oklahoma State University.

23 Q All right. You're -- I think you're
24 answering a question I haven't asked, but that's
25 okay.

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1 Q All right. Looking at this Exhibit
2 11, in the last sentence of the first paragraph,
3 it says: "Outside of watershed areas, however,
4 there are soils which can greatly benefit from
5 the application of this material which helps
6 build soil with nutrients and organic matter."

7 Did I read that correctly?

8 A Yes, you did.

9 Q Do you agree that sentence describes
10 benefits of the use of the poultry waste?

11 A Yeah. In some specific areas.
12 Because I'm the one that wrote that sentence, so
13 yes, I do believe --

14 Q Oh, you wrote the sentence?

15 A Yes, sir.

16 Q Okay. Did you write all this text
17 on this page?

18 A I believe so. It might have been
19 updated by Oklahoma State University when they
20 came on board, but most of it, yes, I did.

21 Q The -- well, since you wrote that,
22 you would agree, then, that poultry waste serves
23 not -- can serve not only as a fertilizer, but
24 also as a valuable soil amendment.

25 You agree with that?

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1 MR. GARREN: Objection as to form.

2 Q (BY MR. McDANIEL) I'm sorry. There
3 was two objections -- or an objection of your
4 answer.

5 Your answer was?

6 A Yes. If all the regulations and
7 rules are adhered to.

8 Q All right. The -- all right.

9 So tell me what ODAFF is doing to
10 try to facilitate this litter utilization or
11 waste utilization.

12 A From our division standpoint --
13 we're regulatory, so -- this is one of the very
14 few things we've done in a promotional effort,
15 because we felt there was a need for it.

16 We then contacted Oklahoma State
17 University, because we didn't have enough staff
18 to keep up with our hotline and our website.
19 Oklahoma State University said if we would
20 maintain the toll-free number that people could
21 call to buy or sell, they would maintain the
22 website, they would do education and promotion on
23 it.

24 In the Department of Agriculture,
25 the Market Development division and others are